

Subject: EMPLOYEE REFERENCE CHECKS

| REFERENCES | SECTIONS |
|---|---|
| Law & Regulation http://www.dpa.ca.gov/statesys/dpa/laws.htm | GC:1798-1798.78 Labor Code: 1050, 1053, 1054 |
| Other: | |
| DGS Hiring Process Manual | |

Employee Reference Checks

Policy

It is the policy of the DGS that an employee reference check shall be conducted on all appointments, regardless of the appointment method.

Reference checking

From a sound personnel management perspective, conducting thorough reference checks is the best method to identify potential problem employees. You should be taking steps during the interview and reference checking processes to acquire as much information as possible about the applicant's previous job performance in order to make an informed hiring decision.

As a manager/supervisor, you have a dual role in the reference checking process.

As a prospective employer:

- You must seek job-related information regarding job applicants in order to make an informed hiring decision

As a current or previous manager/supervisor:

- You may be required to respond to reference check inquiries from prospective managers/supervisors regarding your current or past employee

A fine line separates thoroughly reviewing the applicant's background and invading his/her privacy. An overly intrusive investigation may violate an individual's privacy or legal rights. On the other hand, a half-hearted reference check raises the risk of hiring an incompetent or dishonest employee.

There is no approach that will guarantee that you will not be sued by a former employee because of information that was provided in a reference check. However, with the proper preparation and discretion, you should feel comfortable with giving both favorable and unfavorable references. You should also keep in mind that in the event of a lawsuit, the State will defend you if there was no malice involved.

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Employee Reference Checks, Continued

Guidelines for seeking reference information

In an ideal world, reference checks would be unnecessary because all job seekers would accurately and fully disclose the pertinent facts about their employment history. Unfortunately, in the real world, it is essential to conduct thorough reference checks because:

- Many applicants lie on resumes
- Application materials are frequently incomplete
- Lack of information leads to bad hiring decisions
- Negligent hiring claims are more likely

The following table describes the steps and actions necessary to conduct a thorough reference check.

| Step | Action |
|------|---|
| 1 | Obtain a signed Authorization to Release form from the applicant. This allows you to contact former supervisor(s) and review the Official Personnel Folder (OPF), if the applicant is a current State employee. |
| 2 | Verify information on the application and/or resume form. You should pay close attention to dates of employment to identify any discrepancies or gaps in employment history. These should be carefully discussed with the job applicant, and you should be satisfied as to the reasonableness of the explanation. |
| 3 | <ul style="list-style-type: none">• Ask specific job-related questions during the interview and reference check.• In the interview, all candidates are asked the same set of questions to ensure consistency.• In reference checking, identify the factors that are most critical for successful performance of the job (i.e., meeting deadlines, good interpersonal and communication skills, flexibility, decision-making skills, accuracy, etc.) and gear your questions to these areas. |
| 4 | <ul style="list-style-type: none">• Be cautious of references that are extremely positive or negative. An extremely flattering review may be given by the current employer in an effort to ensure that a problem employee will be hired by another agency. Extremely negative ratings may result from a desire to retaliate against the person for attempting to leave the job or for personal reasons. You should evaluate these relative to all references received on the applicant and assign the appropriate weight. |

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Employee Reference Checks, Continued

Reference checking – legal considerations

As a prospective employer seeking information about a job applicant, you must be aware of negligent hiring/negligent retention liability. These are:

- Defamation – is defined as an injury to the reputation or good name of another that tends to bring that person into disrepute. In order for defamation to occur, the following components must be present:
 - A false or malicious statement must be made
 - The statement must be communicated either orally (slander) or in writing (libel) to a third party
 - The statement must damage the employee or his/her character/reputation

In the employment area, defamation claims arise most often from:

- Statements made as part of a request for a reference when the employee is seeking new employment
 - Disseminating information, including the reasons the employee was terminated or voluntarily resigned to those who do not need to have the information
- Qualified privilege – is an exchange of information between employers (who have a common interest in hiring qualified applicants) regarding previous work history of an employee made as part of a reference check is protected from suits for defamation if the statements regarding an applicant's previous work history are made in good faith to persons having a legitimate need to know.

The protection of qualified privilege exists only when the following conditions are met:

- The information must be given in good faith
- The truth of the information can be substantiated
- The information should be limited to the inquiry
- The information must be given during the proper time and in the proper manner
- The information must be communicated to the proper parties
- The requested information must be strictly related to the requirements of the job

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Employee Reference Checks, Continued

Reference checking – legal considerations (continued)

- Negligent hiring/negligent retention – when a current or former employer refuses to disclose or selectively discloses information about the qualifications of an applicant, it minimizes the chances of a defamation lawsuit for that employer. However, it forces prospective employers to make selection decisions based on incomplete or faulty information and exposes these employers to another type of liability – negligent hiring and negligent retention.

If a prospective employer knew, or should have known, based on a reasonable inquiry into an applicant's background that the person was not suitable for the position and subsequently places a dangerous or unqualified individual in a position where s/he can harm co-workers or third parties, the employer can be held liable for the employee's acts.

- Negligent referral – failing to provide negative information in response to specific questions could be grounds for substituting or transferring a company's liability to you. The legal argument could be easily made that had you provided the negative information when asked, the company would not have negligently hired the applicant.
- State laws and regulations – the following statutes do not focus on State employees but provide guidance in reference checking and declares legislative intent in this area:
 - Information Practices Act – places specific requirements on State agencies in the collection, use, maintenance, and dissemination of information relating to individuals (Government Code Sections 1798-1798.78)
 - California Labor Code sections pertaining to reemployment privileges:
 - ❖ Section 1050
 - ❖ Section 1053
 - ❖ Section 1054

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Employee Reference Checks, Continued

**Guidelines for
the reference
provider**

This information is provided to assist you to stay within the applicable legal boundaries when responding to reference inquiries:

- Verify that the caller has a legitimate need for the information.
- Limit your remarks to the inquiry. Reply only with descriptions of job performance examples. Exercise good judgment in determining what negative information should be volunteered when the reference seeker does not ask you specific questions related to an area of deficiency or poor work. There are basically three different categories of negative information:
 - Information that is not job-related
 - Information that is job-related but not critical to successful job performance
 - Information that is critical to the performance of the job
- Provide truthful information
- When giving negative information, give specific facts without labeling them negative
- Discuss both the positive and negative attributes of an individual
- Do not be more candid with friends than you would be with others

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Employee Reference Checks, Continued

Official personnel folder review (OPF)

If you have selected an applicant who is a current or prior State employee, you or your designee **must** review the individual's Official Personnel Folder (OPF). Following are the steps you need to take for arranging to review a potential employee's personnel file:

- Contact the Human Resources Office of the candidate's department.
- Inform them you would like to review an OPF for an employee of their department. They will ask you for the employee's name or other pertinent information in order to direct you to the appropriate individual.
- Once you reach the individual that is responsible for that file, arrange an appointment time and date. Let this individual know that you would like copies of the candidate's Office Employment History, leave balances for the past three years, and the State Controller's Office blue Personnel Action Request (PAR).
- Make sure to ask where they are located.
- Take an Official Personnel Folder Review Sheet, signed Authorization to Release form and PAR Transactions Codes list.
- Take a picture identification of yourself.

Attachments

[Authorization to Release Information form](#), [Employment Reference Questions form](#), [Official Personnel Folder Review Sheet](#), [PAR Transactions Codes](#)
